Office-Supreme Court, U.S.
FILED
FEB 12 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. [redacted] 116

No. .....

THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

To the Honorable The Chief Justice and The Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit which denied enforcement of a judgment rendered by the Circuit Court of DeKalb County, Alabama, in favor of Petitioner.

OPINIONS BELOW.

The judgment of the Circuit Court of DeKalb County, Alabama (R. 10, Appendix A); the order and opinion of the District Court (R. 26-28, Appendix B); and the opinion of the Fifth Circuit Court of Appeals (R. 41, Appendix C).

JURISDICTION.

The opinion and judgment (R. 41, Appendix C) of the Fifth Circuit Court of Appeals was entered on November 21, 1963, and the jurisdiction of this court is invoked under 28 U. S. C. A., Sec. 1254 (1).

QUESTIONS PRESENTED.

Circumstances of the Case.

Petitioner was awarded a **judgment** in the Circuit Court of DeKalb County, Alabama, based on the Georgia Workmen's Compensation Act (R. 30, Appendix A), and sought to enforce the **judgment** in the United States District Court for the Northern District of Alabama. Petitioner's complaint was dismissed (R. 26-28, Appendix B), and the United States Court of Appeals for the Fifth Circuit affirmed the District Court (R. 41, Appendix C).

The Questions.

1) Was the Circuit Court of DeKalb County, Alabama, free to enforce the Georgia Compensation Act as long as the enforcement did not violate the United States Constitution?

2) Does the decision of the court below deny to the State of Alabama the freedom to adopt such rules governing conflict of laws as it chooses?

3) Does the Court of Appeals deny to the State of Alabama the right to determine what aspects of a foreign statute were merely matters of procedure, and what were substantive matters?

4) Was the Court of Appeals' judgment in error in denying "Full Faith and Credit" to the **judgment** of the Circuit Court of DeKalb County, Alabama?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Fourth Article, Section 1, of the United States Constitution is involved:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

STATEMENT OF THE CASE.

Petitioner filed a suit against A. H. Lawler Construction Company, Inc., a corporation, in the Circuit Court of DeKalb County, Alabama, to recover for injuries sustained in the State of Alabama (R. 8-9). The Respondent had issued a workmen's compensation insurance policy to A. H. Lawler Construction Company, Inc. The Honorable W. M. Beck made a special appearance as attorney for Lawler Construction Company and/or Respondent (R. 19-20), but was later permitted to withdraw from the case (R. 10-21). On February 1, 1959, Petitioner was awarded a **judgment** by the Circuit Court of DeKalb County, Alabama, and said **judgment** was based on the Georgia Workmen's Compensation Law (R. 8-9). Petitioner filed a complaint in the United States District Court for the Northern District of Alabama on March 14, 1963 (R. 1-3) to compel the Respondent to satisfy said **judgment**.

Jurisdiction of the United States District Court was invoked under 28 U. S. C. A., Sec. 1332, due to Petitioner being a citizen of the State of Alabama; the Respondent being a corporation organized and existing under the laws of Switzerland and the State of Illinois having its principal place of business in Chicago, Illinois, and the amount in controversy, other than interest and cost, exceeded Ten Thousand Dollars (R. 1).

Respondent filed a motion to dismiss (R. 4-7), and Petitioner filed an alternative motion for judgment on the pleadings or summary judgment (R. 24-25).

The District Court, by its judgment dated May 16, 1963, granted Respondent's motion to dismiss (R. 26-28, Appendix B). A timely motion for leave to appeal *in forma pauperis* was presented to the District Court (R. 29), and said leave was granted by the court in its order of June 5, 1963 (R. 34). Notice of appeal was filed on June 5, 1963 (R. 35). The Fifth Circuit Court of Appeals affirmed the decision of the District Court on November 21, 1963 (R. 41, Appendix C).

REASONS FOR GRANTING THE WRIT.

I.

The Circuit Court of DeKalb County, Alabama, is free to enforce the Georgia Compensation Act, and the enforcement does not violate the United States Constitution.

The Supreme Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, 294 U. S. 532, 79 L. Ed. 1044 (1935); and in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, 306 U. S. 493, 83 L. Ed. 940 (1938), was confronted with the problem as to whether or not the forum state should use its own compensation act, or the compensation act of a sister state.

The Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, said:

> "... the **compensation acts** of **either jurisdiction** may, consistently with due process, **be applied in either** [State] ..." 294 U. S. 532, at p. 544 (emphasis supplied).

And in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, this court said:

> "... **either state** ... **would be free** to **adopt** and **enforce** the **remedy provided** by the **statute of the other** [State] ..." 306 U. S. 493, at p. 500 (emphasis supplied).

The DeKalb County Circuit Court did **enforce** the Georgia Compensation Act just as **this Court** said it may do and awarded Petitioner a **judgment** (R. 10, Appendix A). In the light of the foregoing decisions, how could the Court of Appeals hold, as it did, that the Alabama Court could not enforce the Georgia Act?

The Court of Appeals said the case of **Green v. J. A. Jones Construction Company**, 161 F. 2d 359 (5th Cir., 1947), controlled its decision here (R. 41, Appendix C); however, the **Green** case was an original action in the United States District Court in Mississippi, whereas here, Petitioner was awarded a **judgment** by the Alabama Circuit Court based on Georgia Law[1] (R. 10, Appendix A).

The United States District Court in Mississippi uses the conflict of law or choice of laws of Mississippi,[2] not of Alabama or Georgia. The **Green** case is not authority for the Court of Appeals' decision that the Alabama Circuit Court cannot enforce the Georgia Compensation Act.

In fact, Alabama has a statute authorizing the courts of Alabama to enforce foreign created actions. This statute says:

> "Whenever, either by common law or statutes of another state, a cause of action, either upon contract, or in tort, has arisen, in such other state against any

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[1] The Circuit Court shall have original jurisdiction in all matters civil and criminal within the state not otherwise excepted in this Constitution; but in civil cases, other than suit for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter of sum in controversy exceed fifty dollars. *Alabama Constitution*, Article VI, Section 143.

[2] *Griffin v. McCoach*, 313 U. S. 498, 85 L. Ed. 1481 (1941); 6 *Ala. L. Rev.* 84 (1953).

person or corporation, the **cause of action shall be enforced within** the **courts of this state**, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state." **Ala. Code**, Tit. 7, Sec. 97 (1940) (Recomp. 1958) (emphasis supplied).

Not only has this Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra*, and in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, said that the forum state (Alabama) could enforce the foreign statute, but the legislature of Alabama requires that ". . . [the] **cause** of action **shall be enforced** within the **courts of this state** . . ." **Ala. Code**, Tit. 7, Sec. 97 (1940) (Recomp. 1958). (Emphasis supplied.)

II.

Each state is free to adopt such rules of conflict of law or choice of laws as it chooses as long as the rules do not violate the United States Constitution.

This Court has repeatedly held that each state was free to adopt such rules of conflict of laws or choice of laws as it may choose. The Supreme Court in **Wells v. Simonds Abrasive Company**, 345 U. S. 514, 97 L. Ed. 1213 (1953), said:

"The states are free to adopt such rules of conflict of laws as they choose, **Kryger v. Wilson**, 242 U. W. 171, 61 L. Ed. 229, 37 S. Ct. 34 (1916), subject to the Full Faith and Credit Clause and other constitutional restrictions. The Full Faith and Credit Clause does not compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister state." 345 U. S. 514 at p. 516.

In the case of **Pacific Employers Insurance Co. v. Industrial Acci. Comm.**, supra, the Court said:

> "... and the law of neither [State] can by its own force determine the choice of law to be applied in the other." 306 U. S. 493 at p. 500.

There was a conflict of laws or choice of laws problem in Alabama when the DeKalb County Circuit Court was asked to enforce the Georgia Workmen's Compensation Act; however, the Court of Appeals has by its judgment denied to Alabama the right to adopt such rules of conflict of laws as it chooses and has in effect permitted the law of Georgia to determine the choice of laws in Alabama.

The **Green** case, *supra*, which the Court of Appeals said controlled its decision, was an original action in the United States District Court in Mississippi. Petitioner's suit here is on a **judgment** in a Federal District Court in Alabama which was rendered by an Alabama Circuit Court.

The Court in the **Green** case stated:

> "... **The Georgia decisions [Grice v. United States Fid. & Guar. Co.**, 187 Ga. 259, 200 S. E. 700; **Blue Bell Globe Mfg. Co. v. Baird**, 64 Ga. App. 347, 13 S. E. 2d 105; **Echols v. Chattanooga Merc. Co.**, Ga. App., 38 S. E. 2d 675] settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)." (Emphasis supplied.)

Neither the "Georgia decisions" nor the Georgia statute (**Georgia Code**, 114-103) can settle the issue arising from Petitioner's suit on his **judgment** even though both may be controlling in Georgia or Mississippi.

This Court in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, said:

> ". . . the full faith and credit clause does not require one state to substitute . . . the conflicting statute of another state, **even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and event.**" 306 U. S. 493 at p. 502. (Emphasis supplied.)

The United States District Court in Mississippi uses the conflict of laws or choice of laws of Mississippi[3] therefore, the conflict of laws or choice of laws of Mississippi must have been to look to the foreign law (Georgia Law) for both substantive and procedural matters.

No matter what the conflict of laws or choice of laws may be in Mississippi, it **cannot** dictate to the courts in Alabama as to what their conflict of laws or choice of laws should be.[4]

By the Court of Appeals, by its decision, has permitted the conflict of laws or choice of laws of Mississippi to designate the conflict of laws in Alabama. Further, it has permitted Mississippi to determine what effect Alabama has to accord to the exclusive statute of Georgia (**Georgia Code**, 114-103).

In fact, the Georgia Workmen's Compensation statute (Sec. 114-103),[5] the court referred to in the **Green** case

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[3] *Griffin v. McCoach, supra*; 6 *Ala. L. Rev.* 84 (1953).

[4] *Pacific Employers Insurance Company v. Industrial Acci. Comm., supra*; *Wells v. Simonds Abrasive Company, supra*; *Richards v. U. S.*, 369 U. S. 1, 7 L. Ed. 2d 492 (1962).

[5] "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept any pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code*.

as making the Georgia Act "exclusive", has no enforceability as a defense in any state except Georgia **unless** the sister (forum) state **desires to recognize** it as a defense, as the Mississippi Court did in **Green**.

The Supreme Court in **Carroll v. Lanza**, 349 U. S. 408, 99 L. Ed. 1183 (1954), said:

> "Missouri can make her Compensation Act exclusive if she chooses, and enforce it as she pleases within her borders. Once that policy is extended to other States, different considerations come into play." 349 U. S. 408, at p. 413 (Emphasis supplied).

If it were the policy of Mississippi to give the "exclusive" effect to Georgia Act, it was **not** the policy of Alabama to recognize the "exclusive" effect in this case, and the Alabama Court **was not compelled** to do so by the United States Constitution.

This Court has held that the forum does not violate the "Full Faith and Credit" clause by **supplementing** the foreign (Georgia) Compensation Act, and that is the only question this Court has to decide in enforcing Petitioner's **judgment**. In **Carroll v. Lanza**, *supra*, the following statement was made:

> ". . . the **Pacific Employers Insurance Company** Case [306 U. S. 493, 83 L. Ed. 940 (1938)], teaches, she [forum state] may **supplement** it [foreign Compensation Act] **or displace** it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within its border. We **do not** think the **Full Faith and Credit clause** demands that subserviency from the State of the injury." 394 U. S. 408, at p. 414 (Emphasis supplied).

Since the Court of Appeals in the **Green** case, and here, said a sister state (Alabama) was bound by this "exclusive" section of the foreign (Georgia) Compensation Act, and the Supreme Court said the sister state (Arkansas) **was not** bound by the "exclusive" statute of Missouri, the Petitioner would now like to set out each "exclusive" statute for this Court to compare the similarity of the two statutes.

The Supreme Court in **Carroll v. Lanza** said this Missouri "exclusive" statute did not prevent the Missouri Compensation Act from being **displaced** or **supplemented** in Arkansas. The statute says:

"The rights and remedies herein granted to an employee, shall exclude all other rights and remedies of such employee, his wife, her husband, parents, personal representatives, dependents, heirs or next of kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter." Sec. 287. 120(2). **Missouri Revised Statutes** (1959).

The Court of Appeals said this Georgia "exclusive" statute precluded Petitioner's **judgment** from being enforced, and precluded plaintiff's cause of action in **Green**. The statute says:

"The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss or service death." Chapter 114-103. **Georgia Code.**

What is the difference? What is there about these statutes that permits the Court of Appeals to reach a different conclusion from the Supreme Court?

From a plain reading of the foregoing Georgia Code section, there appears to be an attempt by the legislature of **Georgia** to deny an employee any other recovery except as the amounts stated in the Compensation Act, but **Carroll v. Lanza** has expressly stated that a sister state (Alabama) is not bound by this type of statute. However, here, and in **Green**, Petitioner sought recovery under the Georgia Compensation Act, and the Court of Appeals has used the **exclusive** word of the Georgia section as a "talismanic" word to deny Petitioner his just and due recovery **under the Georgia Compensation Act.**

The Supreme Court in **Carroll v. Lanza** said that the state of the forum (Alabama) could "supplement" the foreign Compensation Act **or** "displace" it. In Petitioner's case the Alabama Court chose not to displace the Georgia Compensation Act but only chose to "supplement" it as to the **procedures** (court action) that were accorded to Petitioner to recover for his injuries by said Compensation Act.

The procedural aspect of the Georgia Compensation Act was the only part displaced or **supplemented** as **Carroll v. Lanza** said could be done by the sister state (Alabama), because the DeKalb County Circuit Court found from the evidence presented that Petitioner was "totally and permanently disabled" (R. 10, Appendix A). When an employee covered by the Georgia Compensation Act is "totally and permanently disabled", that Act has a section[6] dealing expressly with total disability payments

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[6] "When the incapacity to work is resulting from an injury is total, the employer shall pay or cause to be paid, as hereinafter provided for, to the employees during such total incapacity a weekly compensation equal to 60 percent of his average wages, but not more than $30 per week nor less than $10 per week, except when then weekly wage is below $10 then the regular wages on the date of the accident shall be the weekly amount paid, and in no case shall the period covered by such compensation be greater than 400 weeks nor shall the total amount of compensation exceed $10,000." Chapter 114-404, *Georgia Code*.

which any intelligent person can compute; and the DeKalb County Circuit Court did not exceed the $10,000 limitation (R. 10, Appendix A) imposed by this section. What detriment has Respondent suffered by the DeKalb County Circuit Court computing the amounts set out in that section?

Respondent may argue that **Carroll v. Lanza** stands for one proposition alone: that a foreign Compensation Act would not bar a common-law action in the forum of a sister state; but this Court in **Carroll v. Lanza** said:

> "For we **write not only for this case** and this day alone **but for this type of case.**" 349 U. S. 408 at p. 413. (Emphasis supplied.)

Petitioner's case is the **same** "type" of case as **Carroll v. Lanza** in which the Compensation Act was asserted as a defense. Here it was asserted to obtain affirmative relief, and the procedural aspect of the Act is **now** raised as a defense to Petitioner's **judgment.** Did not the words in the **Carroll v. Lanza** authorize the DeKalb County Circuit Court to "supplement" the Georgia Compensation Act by using its own procedure (the court action) when the Supreme Court said:

> ". . . the **Pacific Employers Ins. Co.** case [306 U. S. 493, 83 L. Ed. 940 (1938)] teaches, she [forum state] may **supplement** it [foreign Compensation Act] or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within her border . . ." 349 U. S. 408 at p. 414. (Emphasis supplied.)

And especially since in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, this Court said:

". . . either state . . . would be free to **adopt** and **enforce** the remedy provided by the statute of the other [state]." 306 U. S. 493 at p. 500. (Emphasis supplied.)

III.

The Court of Appeals denied to the Alabama Court the right to determine what aspects of the Georgia Compensation Act were matters of procedure and what were substantive matters.

It has long been the rule of this Court and the Alabama Courts[7] that matters of procedure are governed by the local law or law of the forum while the substantive matters are governed by the foreign law.

In 1882 the Supreme Court in **Pritchard v. Norton**, 106 U. S. 124, 27 L. Ed. 104, said:

". . . a civilized State . . . adheres to its own system of formal judicial procedure and remedies. And . . . the law of the procedure and remedy, . . . **must be** domestic and **local**. In respect to the latter, the foreign law is rejected; but how and where to draw the line of precise classification is not always easy to determine." 106 U. S. 124 at p. 129. (Emphasis supplied.)

As the Court in **Pritchard v. Norton** said it is not easy to determine the distinction between procedure and substantive matters, but the court of the forum (Alabama) or local law (Alabama) controls as to making this characterization.

In **Moran v. Pittsburg-DesMoines Steel Co.**, 166 F. 2d 908 (3rd Cir., 1948), Cert. den. 334 U. S. 846, 92 L. Ed. 1770, the court said:

[7] *Dollahite-Levy Company v. Overton*, 233 Ala. 12, 133 So. 903 (1931).

"... Likewise, ... the application of ... conflict of laws determining whether a given question is to be characterized as substantive ... or procedural, ... the law of the forum, controls ..." 166 F. 2d 903 at p. 910.

To illustrate how clear the rule seems to be that the forum State determines the characterization of what matters are procedural and what are substantive: That the law relating to the amount of damages recoverable was a matter of substantive law was so universal that citations here are unnecessary; however, in the recent case of **Kilberg v. Northeast Airlines, Inc.**, 9 N. Y. 2d 34, 172 N. E. 2d 526 (1961), matters concerning the amount of damages recoverable was determined to be purely procedural and **not substantive**, thereby permitting the forum state (New York) to disregard the limitation of damages placed on the cause of action by the sister state (Massachusetts).

The Court of Appeals of New York in **Kilberg** said:

> "Some of the **older** Federal cases ... give defendants the benefit of limitations of damages found in the law of the place of wrong, regardless of where the actions were brought. Those cases, however, are not binding on us and **do not bring into play** the **full faith** and **credit** clause of the Constitution, Art. 4, Sec. 1 (see **Wells v. Simonds Abrasive Company**, 345 U. S. 514, 73 S. Ct. 856, 97 L. Ed. 1211)." 172 N. E. 2d 526 at p. 529. (Emphasis supplied.)

It was not a violation of the "Full Faith and Credit" clause for the Alabama Court to determine that the Georgia Compensation Act's requirement that Petitioner file his claim before the Board in Georgia[8] was merely pro-

[8] (R. 5).

cedural; therefore Petitioner's **judgment** was not subject to collateral attack.

The Respondent may argue that the procedure and right are so closely related that the Alabama Circuit Court could not enforce Petitioner's right; however, the forum state (Alabama) must make this determination and **not** the Court of Appeals when it is asked to enforce Petitioner's **judgment.**

Such argument cannot prevail when this Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra*, said:

> ". . . the **compensation acts** of **either jurisdiction** may, consistently with due process, **be applied in either** [state] . . ." 294 U. S. 532 at p. 544. (Emphasis supplied.)

And in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, the Supreme Court said:

> ". . . **either state** . . . **would be free** to **adopt** and **enforce** the **remedy provided** by the **statute** of the **other** [state] . . ." 306 U. S. 493 at p. 500. (Emphasis supplied.)

If the forum state is prohibited from determining what aspects of a foreign statute were procedural and substantive then the state of the forum (Alabama) would also be prohibited from providing protection for its citizens injured within its borders and they would become public charges for the state to provide for their upkeep. This was the rationale of the **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra* and **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*.

The Alabama Court was correct in enforcing the Georgia Compensation Act, and the **judgment** rendered in ac-

cordance with its provisions was entitled to "Full Faith and Credit" by the Court of Appeals.

IV.

The Court of Appeals was in error in denying Full Faith and Credit to the judgment of the Circuit Court of DeKalb County, Alabama.

In **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, the Supreme Court said:

> "... either state ... would be **free** to **adopt** and **enforce** the remedy provided by the statute of the other [state] ..." 306 U. S. 493 at p. 500. (Emphasis supplied.)

And in **Cooper v. Newell**, 173 U. S. 555, 43 L. Ed. 808 (1898), this Court said:

> "... courts of the United States are bound to give to the judgments of the state courts the same faith and credit that the courts of one state are bound to give to the judgments of the courts of her sister states." 173 U. S. 555, at p. 567.

Petitioner's **judgment** awarded by the DeKalb County Circuit Court was to be accorded "Full Faith and Credit" by the Court of Appeals[9] and was not subject to collateral attack once the Supreme Court had said the court of the forum (Alabama) could **adopt** and **enforce** the Georgia Compensation Act.

The Court of Appeals is therefore in error for not according "Full Faith and Credit" to Petitioner's **judgment**.

Green v. J. A. Jones Construction Co., *supra*, which the Court of Appeals said controlled Petitioner's suit on his

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[9] See 28 U. S. C. A., Sec. 1738.

judgment, would not be authority for even a court in Mississippi or Georgia to deny "Full Faith and Credit" to Petitioner's cause of action on his **judgment**.

This court in **Kenney v. Loyal Order of Moose**, 252 U. S. 410, 64 L. Ed. 638 (1920), said:

> "... Therefore the fact that here the original cause of action could not have been maintained in Illinois [Georgia or Mississippi] is not an answer to a suit upon the judgment." 252 U. S. 410, at p. 415.

The DeKalb County Circuit Court was also confronted with a Full Faith and Credit problem when it was asked to enforce the Georgia Compensation Act. The Supreme Court in **Alaska Packers Assoc. v. Industrial Acci. Comm.**, *supra*, said:

> "... rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, **but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.**" 294 U. S. 532, at p. 547 (Emphasis supplied).

When the DeKalb County Circuit Court appraised the governmental interest of Alabama and Georgia, the "scale of decision" was balanced in favor of Alabama and Petitioner. Then the Circuit Court **adopted** and **enforced** the remedy provided for in the Georgia Workmen's Compensation Act just as the Supreme Court in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, said the court of the forum (Alabama) could do.

Once the Alabama Court had appraised the governmental interest of both states and rendered a **judgment** for

Petitioner; then it was error for the Court of Appeals not to accord "Full Faith and Credit" to the **judgment.**

The court in the **Green** case, *supra*, for all intents and purposes was a Mississippi Court (United States District Court in Mississippi). How can a Mississippi Court weigh the governmental interest of Alabama and Georgia? The **Alaska Packers** case said for the state confronted with the "Full Faith and Credit" problem to weigh the governmental interest and **not a third disinterested state.**

It is the State of Alabama that has the duty to prevent its citizens from becoming public charges and not the State of Mississippi or the State of Georgia.[10]

CONCLUSION.

Petitioner's **judgment** was not subject to collateral attack because the Circuit Court of DeKalb County, Alabama, which rendered the judgment was correct when it enforced the Georgia Compensation Act and used its own conflict or choice of laws to do so.

The Court of Appeals erred in prohibiting the Alabama Court from enforcing the Georgia Compensation Act when it required the Alabama Court to use the conflict or choice of laws of Mississippi. This erroneous decision of the Court of Appeals also required the Alabama Court to use the conflict or choice of laws of Mississippi to weigh the "governmental interests" of Alabama in preventing its citizens from becoming public charges.

Further, the Court of Appeals erred in not according "Full Faith and Credit" to Petitioner's judgment and per-

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[10] *Alaska Packers Assoc. v. Industrial Acci. Comm., supra. Pacific Employers Ins. Co. v. Industrial Acci. Comm., supra; Carroll v. Lanza, supra.*

mitting it to be collaterally attacked when said **judgment** was rendered in accordance with the reasoning of the decisions of this Court and without any constitutional rights denied to Respondent.

Granting the writ prayed for will permit this Court to ascertain the similarity in Petitioner's case and **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra*; **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*; **Carroll v. Lanza**, *supra*; and to determine if Petitioner's case should be governed by the rules announced in those decisions.

For the reasons set out above it is respectfully submitted that this petition for certiorari should be granted.

J. TERRY HUFFSTUTLER,
First National Building,
Birmingham, Alabama,
Counsel for Petitioner.

Of Counsel:
MAX C. POPE,
LEVINE, FULFORD, GWALTNEY & POPE.
510 Frank Nelson Building,
Birmingham, Alabama.

Proof of Service.

I, J. Terry Huffstutler, one of the attorneys for Thomas J. Crider, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of February, 1964, I served copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the Respondent thereto by mailing a copy in a duly ad-

dressed envelope, first class postage prepaid, to the Honorable Foster Etheredge of the law firm of Spain, Gillon and Young, First National Building, Birmingham 3, Alabama, the attorney of record for Respondent.

J. Terry Huffstutler,
First National Building,
Birmingham 3, Alabama,
Attorney for Thomas J. Crider.

APPENDIX A.

JUDGMENT OF COURT AWARDING COMPENSATION.

In the
Circuit Court of DeKalb County, Alabama.

Thomas J. Crider,
Plaintiff,
vs.
A. H. Lawler Construction Company, Inc., a Corporation,
Defendant.
No. 590.

This day came the Plaintiff, Thomas J. Crider, with his attorney, J. Terry Huffstutler; and the defendant, A. H. Lawler Construction Company, Inc., a corporation, failing to appear (the Court having granted the request of the withdrawal as attorney for the defendant made by Hon. W. M. Beck and the Court further being satisfied that defendant was notified of the withdrawal of representation by Hon. W. M. Beck); and after hearing the evidence on the amended complaint of Plaintiff, the Court is of the opinion that the Plaintiff is totally and permanently disabled as a result of the injuries sustained while acting within the line and scope of his employment for the defendant, and it is the judgment of the Court, that compensation be and the same is hereby awarded to the Plaintiff in the sum of Ten Thousand Dollars ($10,000.00) and the further sum of Five Hundred Dollars ($500.00) for medical expenses.

It is, therefore, considered, ordered and adjudged by the Court that the Plaintiff have and recover from the Defendant the said sum of Ten Thousand Five Hundred Dol-

lars ($10,500.00) in one lump sum, together with costs in this behalf expended, for all of which execution may issue.

It is further considered and ordered by the Court, and it is the judgment of the Court, that the attorney's fee of J. Terry Huffstutler, for the Plaintiff, be and the same is hereby fixed at Three Thousand Five Hundred Dollars ($3,500.00).

The foregoing order and judgment entered this 11th day of February 1959.

/s/ W. J. Haralson,
Circuit Judge.

I, Herbert G. Tate, Clerk of the Circuit Court, DeKalb County, Alabama, do hereby certify the foregoing to be a true and correct copy of the Judgment entry in this case. Recorded in Civil Minute Record L, pages 513 and 514.

Given under my hand and official Seal of office, this the 10th day of February, 1961.

Herbert G. Tate,
Circuit Clerk.

(Seal)

APPENDIX B.

(ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA.)

In the United States District Court for the
Northern District of Alabama,
Southern Division.

Thomas J. Crider,
Plaintiff,

vs.

Zurich Insurance Company,
a Corporation,
Defendant.

Civil Action.
No. 63-119-S.

This matter came on for hearing at this time upon the plaintiff's motion for summary judgment and upon the defendant's motion to dismiss.

From the proceedings herein, the following facts appear to be undisputed:

Plaintiff, Thomas J. Crider, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Both Crider and Lawler were under and subject to the Workman's Compensation Act of Georgia at the time the former was injured. Crider instituted a suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeking recovery under three counts, the first count being under the Alabama Compensation Law and Counts Two and Three being under the common law.

On February 11, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial, and added Count A under the Georgia Com-

pensation law. On the following day judgment by default was entered against Lawler for the sum of $10,500, together with costs.

The defendant herein, Zurich Insurance Company, a corporation, was the Workman's Compensation insurer of Lawler. It claims that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter, and that this action cannot be maintained against Zurich who is in privity with Lawler, and that the judgment is void.

The Court has heard oral argument, has considered the briefs and reviewed the authorities, and is of the opinion that the defendant's contention is well taken.

In **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, the Court of Appeals for the Fifth Circuit, held that the Circuit Court of Hinds County, Mississippi, and the United States District Court for the Southern District of Mississippi did not have jurisdiction to award damages under the Georgia Workmen's Compensation Act in an original proceeding filed in the former court and removed to the United States District Court. The Court ruled that the Georgia decisions

> "settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)."

A different situation would be presented if the Georgia Compensation Act vested in the Georgia courts the power to entertain an original suit for workmen's compensation. To permit this original action in the courts of Alabama is to allow an original proceeding in such courts where the same is denied to the courts of Georgia.

Since the DeKalb County Circuit Court did not have jurisdiction of the subject matter, the issue of jurisdiction is open to inquiry and where, as here, the record discloses a lack of jurisdiction, the judgment is void. **City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 240; **Murphy v. L. & N.**, 258 Ala. 138, 61 So. 2d 3; **Crump v. Knight**, 286 Ala. 601, 56 So. 2d 625; **Freeman v. McBroom**, 11 Ala. 943.

A party or his privies may assail such a judgment. **Fife v. Pioneer Lumber Co.**, 237 Ala. 92, 185 So. 759; **Cobbs v. Norvill**, 227 Ala. 621, 151 So. 576.

The Court is, thereof, of the opinion that the defendant's motion to dismiss is due to be granted.

It is, therefore, Ordered, Adjudged and Decreed that the defendant's motion to dismiss be and the same is hereby granted, and this action be and the same is hereby dismissed at the costs of the plaintiff.

Done and Ordered, this the 16th day of May, 1963.

H. H. Grooms,
District Judge.

A true copy.

William E. Davis, Clerk,
United States District Court,
Northern District of Alabama,
By Jewel M. Massey,
Deputy Clerk.

(Seal)

APPENDIX C.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

In the
United States Court of Appeals
For the Fifth Circuit.

No. 20633.

Thomas J. Crider,
Appellant,

versus

Zurich Insurance Company,
Appellee.

Appeal from the United States District Court for the Northern District of Alabama.

(November 21, 1963.)

Before Tuttle, Chief Judge, Jones, Circuit Judge, and Johnson, District Judge.

Per Curiam: The decision of the question presented on this appeal is controlled by **Green v. J. A. Jones Const. Co.**, 5th Cir. 1947, 161 F. 2d 359. The judgment of the district court is

Affirmed.

A true copy.

Test: Edward W. Wadsworth,
Clerk, U. S. Court of Appeals, Fifth Circuit.

By .....

(Seal) Deputy.

New Orleans, Louisiana, Dec. 4, 1963.